

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
04-CR-189A

RICHARD MULLEN, a/k/a Carlos Watts,

Defendant.

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(A), on October 19, 2005. On November 23, 2005, defendant filed a motion seeking dismissal of Counts 1 and 2 of the Second Superseding Indictment. On March 1, 2006, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion should be denied. Defendant filed objections to the Report and Recommendation on June 12, 2006 and the government filed a response thereto. Oral argument on defendant's objections was scheduled for 9:00 a.m. on August 16, 2006. However defense counsel failed to appear and the matter was deemed submitted on the papers.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion to dismiss is denied. The case is referred back to Magistrate Judge Foschio for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 14 , 2006